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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 16 2005
EAC 04 061 51308

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional letters.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree from George Washington University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, journalism. The director did not contest that the *proposed* benefits of her work "as a journalist at VOA [Voice of America] and as part of the broadcasting team that brings reliable and authoritative news to the world audience" would be national in scope.

Initially, counsel asserted that the national interest would be adversely affected if a labor certification were required because the petitioner's combination of journalism skills and bilingual abilities are unique. Counsel further asserts that the labor certification process "would be very time consuming and could possibly interrupt the important work carried out by" the petitioner. Counsel asserts that VOA has difficulty finding qualified broadcasters and, thus, "the need for [the petitioner's] continued participation in her current work is urgent." At the time of filing, the petitioner had already stopped working for VOA and one of the initial letters from VOA asserts that it has no openings for the petitioner at this time. Thus, the initial materials submitted did not establish how the labor certification process would inconvenience the VOA. On appeal, the petitioner submits a new letter from the same individual at VOA asserting that as of January 2005, one year after the petition was filed, VOA was recruiting for contractor positions, and none of the respondents had journalism experience. This new letter asserts that if the waiver is granted, the petitioner "could start work as a contractor immediately."

Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. As of the date of filing, the petitioner had not worked for VOA for seven months. The record is simply not persuasive that it is the labor certification process that is delaying the petitioner's employment with VOA. Moreover, the new letter does not explain why journalism experience could not be listed on an application for

labor certification for a broadcast position. Regardless, special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

The fact that the beneficiary happens to originate from China and, thus, has international cultural experiences, is not evidence that she has or will make an impact on the field of journalism. If Citizenship and Immigration Services (CIS) were to accept that the beneficiary's cultural experiences warrant approval of the waiver, CIS would need to approve the waiver for every alien journalist. The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all alien journalists.

Counsel initially asserted that the petitioner's "proposed employment is in international broadcasting. Specifically, she is proposed to work as a journalist for the Mandarin Service of the Chinese Branch at the Voice of America." Dahren Luo, Chief of VOA's Mandarin Service, praises the petitioner's knowledge in journalism and international affairs and her language skills. As a "Purchase Order Vendor" the petitioner produced news stories and broadcasted them. Mr. Luo notes that VOA has a potential audience of 1.2 billion people in China as well as Mandarin speakers outside of China. He does not indicate how many Chinese actually listen. For example, he does not indicate whether or not China jams VOA and, if so, how many Chinese listeners are known outside of China. As evidence of her potential influence, Mr. Luo notes her interview with a member of a human rights group and coverage of media censorship in China during the SARS outbreak.

The petitioner, however, only had a temporary job with the VOA that had ended prior to filing the petition. Specifically, William Baum, Chief of the Chinese Branch for VOA, asserts that the petitioner worked for VOA "as a Contractor in the Mandarin Service," where she "contributed to our current affairs and news programs, and she proved to be a reliable and promising journalist." Mr. Baum then states that VOA does not currently have any vacancies for full-time broadcasters. Thus, the record does not reflect that VOA was, at the time of filing, seeking to hire the petitioner full-time. The petitioner must establish eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Even on appeal, VOA only expresses an interest in utilizing the petitioner's services as a contractor. We note that a job with VOA is the sole basis of the petitioner's eligibility claim. Regardless, the petitioner has not established that a ten-month internship under an occupational training visa demonstrates a track record of success with some degree of influence on the field of journalism.

At the time of filing, the petitioner was working for the Cross-Strait Interflow Prospect Foundation as a bilingual editor. According the ETA-750B signed by the petitioner, she was "translating/editing monthly reports, working papers, and yearly reports in English and Chinese." This information is confirmed by Tung Chen Yuan, director of the China Economic Analysis Project at the foundation. Mr. Yuan states:

> [The petitioner] takes charge of all translation work for monthly reports and working papers of this project. Doing an outstanding job of translating these reports into Chinese or English with her unique acquaintance with Chinese affairs and economic terminology, [the petitioner] is making a great contribution to this project. With her excellent work, the academic reports written by worldwide scholars, including Chinese scholars, are published in both Chinese and English to provide analyses on current Chinese economic development and its implication for regional economies.

Thus, while accurate translations of the reports are important, the petitioner does not appear to be responsible for the content of the reports. Thus, the petitioner has not established how this work is evidence of a track record of success with some degree of influence on the field of journalism.

Patricia Phalen, Director of Graduate Studies at the George Washington University, praises the petitioner's initiative in learning English and finding the internship with VOA. Ms. Phalen, however, does not explain the petitioner's influence on the field of journalism.

The petitioner submitted her stories and translations. It is inherent in the field of journalism to write stories and inherent to the position of translator to translate. The petitioner has not demonstrated the impact these stories and translations have had in the field of journalism. Simply covering a significant story is not evidence of the journalist's impact in the field.

On appeal, the petitioner submits evidence that she returned to VOA in August 2004 and reported on several other stories for the VOA. All of the accomplishments discussed on appeal, however, occurred after the date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

We do not question the national interest of broadcasting VOA. Moreover, the petitioner has established her competence and qualification for a contracting job with VOA. She has produced stories that are well received by her employers. The record, however, lacks evidence of the petitioner's track record of success with a demonstrable influence in the field of journalism.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.